

In The  
**Supreme Court  
of the United States**

OCTOBER TERM, 1978

No. 78-706

SOUTHERN PACIFIC TRANSPORTATION COMPANY,  
UNITED TRANSPORTATION UNION AND  
UNITED TRANSPORTATION UNION, LOCAL 807,  
*Petitioners,*  
v.

DUANE TERRELL BURNS,  
*Respondent.*

*RESPONDENT'S BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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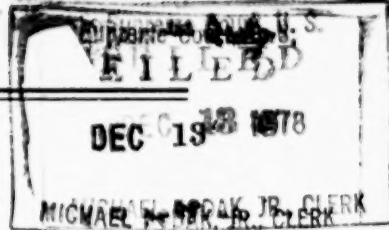
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*RESPONDENT'S BRIEF IN OPPOSITION TO PETITION  
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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

Respondent, Duane Terrell Burns, hereinafter called "Burns", hereby files his opposition to granting the Petition for Writ of Certiorari in the above-captioned matter of Southern Pacific Transportation Company (hereinafter "SPTC"), and the United Transportation Union, United Transportation Union, Local 807 (hereinafter collectively referred to as "UTU" or sometimes as "Union").

**OPINIONS BELOW**

The Opinion of the United States Court of Appeals for the



Ninth Circuit has not been reported at the time of filing this opposition. This Opinion is reproduced in its original form in the Appendix, along with its companion case, *Anderson v. General Dynamics, et al.* The Opinion of the United States District Court for the District of Arizona is reproduced in the Appendix to the Petition for Certiorari.

### **JURISDICTION**

The Court of Appeals entered judgment on September 7, 1978. The Petition for Writ of Certiorari was filed within ninety (90) days of that date. Jurisdiction of this Court is properly conferred under 28 U.S.C. 1254(1).

### **QUESTIONS PRESENTED**

Did the SPTC and the UTU carry their burden of proof to show a reasonable accommodation to this employee's religious beliefs could not be made without undue hardship.

### **STATUTORY PROVISIONS INVOLVED**

The relevant portion of all the Acts are set forth in the Petition and Appendix for Certiorari.

### **COUNTER-STATEMENT OF THE CASE**

Burns has been an employee of the SPTC since December 22, 1955. He is currently classified as a brakeman and conductor by the SPTC. For many years last past, the UTU, and its predecessor unions, has represented a unit of brakemen and conductors of which Burns is a part. Pursuant to the provisions of the Railway Labor Act, the UTU and SPTC have contracted for employees similarly situated as Burns to pay monies to the UTU as a condition of continued employment.

Burns is also a member of a religious organization known as

the Seventh-Day Adventist Church to which he has belonged for over seven (7) years. The Seventh-Day Adventist Church is a religious organization with approximately 500,000 members in the United States, and about two and a half million members in the world. For at least the last 75 years it has been the teaching of the Church that a Seventh-Day Adventist should not join nor financially support a labor organization. For those employees in service as of July, 1955, who are members of a bona fide or recognized religious group, and who object to membership in a labor organization, the UTU and the SPTC have contracted that these employees will only be required to pay monies to the UTU equivalent to its usual dues, fees and assessments. The Union and SPTC have offered to Burns the same option available in 1955, even though the agreement by its express terms does not apply to him.

Burns has maintained membership in the UTU during his tenure with the employer, and served as local chairman of UTU, Local 807, from January 1, 1970 thru July 9, 1973. Burns resigned as local chairman in July, 1973, and withdrew from the Union on February 26, 1974, because he had come to the understanding that his union affiliation was in direct conflict with his religious beliefs. At the time of his withdrawal from the Union, he ceased financial support to the UTU based on his sincere religious beliefs, and the jeopardy in which he believed his eternal salvation would be placed. The Church teaches its members not to join or financially support a union based on its interpretation of the Bible. Burns sincerely believes individually this teaching of the Church, and construes literally the teachings of Ellen G. White, a prophetess to the Seventh-Day Adventist Church. Burns has offered to pay the equivalent of union dues

and assessments to a designated charity in lieu of the contractual obligation. He is prepared to offer proof to the Union of the charity payments.

Attempting an accommodation to his religious beliefs, Burns requested a conference with both the UTU and SPTC prior to his withdrawal from the Union. He requested and arranged to meet personally with representatives of the Company and Union. At that time, Burns suggested that he, in fact, pay the equivalent of the union dues to a designated charity in satisfaction of his contractually imposed obligations. Upon refusal by the UTU and SPTC to consider any accommodation in respect to dues and in anticipation of his discharge, Burns filed charges of religious discrimination with the EEOC in Phoenix, Arizona. Thereafter, he obtained a Right-to-Sue letter, and he filed his Complaint in the District Court on March 1, 1974. The Original Complaint sought injunctive relief, attorney's fees and damages. After the Company and Union agreed that Burns could continue to work while the litigation was pending, the Complaint was amended to seek only injunctive relief from discharge and attorney's fees. The case was tried by the court without a jury, resulting in judgment against him, and Burns appealed to the Ninth Circuit Court of Appeals.

The Union on appeal before the Ninth Circuit urged affirmance of the district court on essentially two grounds: (1) that the UTU had a right and duty to reject Burns' proposed accommodation; and (2) the UTU would not attempt any accommodation because it was impossible as a matter of law given Burns' beliefs (Brief of the UTU and Reply to the EEOC Brief to the Ninth Circuit). Likewise, the SPTC, setting aside the constitutional question, basically urged affirmance twofold: (1)

Title VII did not require it to accommodate religious beliefs involving union dues in face of §2, Eleventh of the Railway Labor Act; and (2) if Title VII did require it to accommodate, it had done so by only requiring "financial core" membership (Brief and Reply Brief, SPTC to the Ninth Circuit).

The circuit court dealt squarely and directly with all of these contentions holding that the SPTC and UTU had not carried its burden to accommodate or by showing undue hardship. In reversing the district court, the appellate court held that the UTU and SPTC had made no effort to accommodate Burns' particular religious beliefs. Further, the Ninth Circuit rejected the argument that payment of the equivalent of union dues to a charity (a form of accommodation which has been coined "charity-substitution"), was an undue hardship as a matter of law. By implication, the Panel found that "financial core membership" was no accommodation at all inasmuch as actual membership is not required by the union security arrangement. Finally, the court held that the evidence offered did not demonstrate that undue hardship, in fact, existed.

Thus, the UTU and SPTC seek certiorari on the very limited issues of (1) whether they carried their burden of proof because undue hardship existed as a matter of law; or (2) if the evidence supports that undue hardship in fact existed despite their failure to offer any accommodation.

## ARGUMENTS AGAINST GRANTING THE WRIT

- I. *There is no conflict among the Circuit Court of Appeals that the union and employer have the burden to accommodate unless they demonstrate undue hardship.*

### A.

The Ninth Circuit correctly held that the UTU and SPTC failed to carry their burden of proof.

The Ninth Circuit in the instant case necessarily found that the UTU and SPTC failed to carry their burden of proof. Their only claim of accommodation was to excuse Burns from actual membership, but require payment of monies to the union. This clearly was no accommodation at all, and was directly violative of Burns' religious beliefs. The Ninth Circuit phrased it:

"Thereafter the burden was on the Company and the Union to prove that they made good faith efforts to accommodate Burns' religious beliefs, that the efforts were unsuccessful, and that they were unable reasonably to accommodate those beliefs without undue hardship. (42 U.S.C. § 2000e(j); *Anderson v. General Dynamics Convair Aerospace Division, supra*)" (original Opinion, Pg. 4, Appendix) (CA 9, 1978).

Every Circuit Court of Appeals to decide this question has consistently held that the union and employer have a statutory duty to attempt accommodation short of undue hardship. Consistently, each circuit has held that the union and employer, not the employee, has the burden of proving undue hardship:

In 1976, the Fifth Circuit held:

[1] "[A]ll reasonable accommodations of appellant's religious beliefs, including one which permits their nonpayment of union dues or the equivalent while continuing regular work assignments with their employer, is

mandated by the sweep of 701(j)." *Cooper v. General Dynamics* 533 F2d 163, 170 (CA 5, 1976); hearing and rehearing in banc denied 537 F2d 1143; cert. denied sub nom. *International Association of Machinists v. Hopkins* 433 U.S. 908 (1977).

[2] In 1978, other circuit courts said:

"The burden is on Essex and IAM to make an effort at accommodation and, if unsuccessful, to demonstrate that they were unable to reasonably accommodate the employee's religious beliefs without undue hardship." *McDaniel v. Essex International, Inc.* 571 F2d 338, 343 (CA 6, 1978).

"[O]nce the Plaintiff here had established that his practice . . . was "religious" . . . , the burden shifted to the employer to demonstrate that he is unable to reasonably accommodate to an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business." *Redmond v. GAF Corp.* 574 F2d 897, 901 (CA 7, 1978).

"The burden was thereafter upon GD and the Union to prove that they made good faith efforts to accommodate Anderson's religious beliefs, and, if those efforts were unsuccessful, to demonstrate that they were unable to reasonably accommodate his beliefs without undue hardship." *Anderson v. General Dynamics* (original Opinion, Pg. 6-7, Appendix) (CA 9, 1978).

[3] Interpreting 29 C.F.R. 1605.1, the genesis to 701(j) (42 U.S.C. § 2000e(j)), in 1974, the Ninth Circuit said:

"Thus we agree with *Reid* and find that accommodation is required . . . If appellees are able to demonstrate that any suggested accommodation would impose undue hardship . . ." *Yott v. North American Rockwell* 501 F2d 398, 403.



## B.

**UTU and SPTC attempted no accommodation, reasonable or otherwise, to the employee's religious beliefs.**

The UTU and SPTC admittedly made no attempt to accommodate Burns' religious beliefs regarding financial support of unions. Their only other "escape hatch" was an argument that any accommodation would constitute undue hardship as a matter of law which was rejected both in *Burns* and *Anderson*; or, that the waiver of actual membership satisfied the duty to accommodate and constituted undue hardship. In reviewing the evidence, the Panel found the offer of proof did not show undue hardship. This finding is both consistent with the record and necessitated by the fact that §2, Eleventh of the Railway Labor Act only provides statutory authority for financial core membership.

The waiver of actual membership is *no* accommodation at all as the UTU and SPTC could only contract to require Burns to pay monies, and not join, the union. The Supreme Court had said as much in dicta in *Railway Employees Department v. Hansen* 351 U.S. 225 (1955), but the Fifth Circuit decided it squarely in the recent case of *Marden v. International Association of Machinists* 576 F2d 576 (CA 5, 1978). The union security arrangement of §2, Eleventh is an extraction from 8(a)(3) of the National Labor Relations Act, and "financial core" membership has long been the law of the National Labor Relations Act since *NLRB v. General Motors* 373 U.S. 734 (1963) and its progeny.<sup>1</sup>

<sup>1</sup> *McDaniel, supra*, at 342-43; *Abood v. Detroit Board of Education* 431 U.S. 209, 217, n. 10 (1977); *NLRB v. Hershey Food Corp.* 513 F2d 1083 (CA 9, 1975); *Union Starch and Refining Co. v. NLRB* 186 F2d 1008 (CA 7, 1951); *Local 1104, CWA v. NLRB* 520 F2d 411 (CA 2, 1975); *AFTRA and William F. Buckley, Jr.* 222 NLRB No. 34.

The appellate courts have consistently agreed on the union and company's duty to accommodate religious beliefs in light of the union security provision, and have consistently reversed those cases where no accommodation was attempted. If no accommodation was attempted, the significant issue under federal law claimed by UTU and SPTC is simply reduced to evidentiary implication.

**II. The UTU and SPTC could have, in fact, provided a reasonable accommodation.**

## A.

## AFL-CIO Policy

The official policy statement of the AFL-CIO says that unions should immediately adopt policies "giving to religious objectors the option of contributing to a non-religious charity sums equal to union dues and initiation fees". These men intimately knowledgeable in the affairs of the Union say that it could be done, should be done, and has been done by a number of national and international unions. This policy statement of the AFL-CIO has been in full force and effect for 13 years, and has not been altered or amended in any way.

The AFL-CIO position statement was based on the recommendation of no less an expert than George Meany who said:

"... In other cases religious objectors have not participated at all in union enterprises, but have paid the equivalent of dues to a union charitable fund or to an agreed upon charity ..."

In any event, I believe the unions, and employers too should accommodate themselves to genuine individual religious scruples, and I am sure that all of our unions will

take that view too. [I intend accordingly to propose to the AFL-CIO Executive Council that it should adopt a strong policy statement to that effect.]; and that the International Unions affiliated with the AFL-CIO undertake to insure that their local unions scrupulously respect individual religious reservations in the administration of union security arrangements." (Emphasis Supplied) (George Meany's letter to the Honorable Frank Thompson, Jr., Chairman, Special Subcommittee on Labor of the House Committee on Education and Labor, dated May 28, 1965, at pg. 2).

## B.

### Congressional Action

As further evidence of the AFL-CIO's expertise and maturity in the area, it recently supported a "conscience clause" amendment in both houses of Congress. A charity-substitution arrangement, identical to that sought by Burns, was supported by the AFL-CIO and became a part of the Labor Law Reform Act. Although the Labor Law Reform Act ultimately did not become law, it is indicative of the AFL-CIO's support on this point. No less an advocate for the union than Representative Frank Thompson, joined hands with other House leaders to secure House approval for charity-substitution. Appearing in the Appendix is a reproduction of the debate in the House, and is provided as an illustration that charity-substitution is an appropriate response to the accommodation/undue hardship standard.

Congress did pass into law a recent provision providing that an employee of a health care institution who holds a religious belief against joining or paying money to a union, cannot be required to join or support a labor organization as a condition of continued

employment.<sup>2</sup> In order to deal with any potential "free rider" problems, Congress provided that such employee would pay the equivalent of dues and initiation fees to a charity recognized by the Internal Revenue Code. The first question one might ask in looking at the legislative history of the Hospital Amendment was why they needed charity-substitution spelled out if it had been covered by 701(j) as contended by Burns. The answer is that the Hospital Amendment gave extended protection to the employee which would not vanish if undue hardship was proven. In other words, accommodation is a right qualified by undue hardship to an individual's religious beliefs. Exemption is an absolute right with no qualification as to undue hardship.

## C.

### State Laws

The feasibility of charity-substitution is evidenced by the statutes of Washington, Oregon, Alaska and Montana enacting the exact accommodation sought by Burns.<sup>3</sup> Those states say charity-substitution is working elsewhere in the field of public employment, and are consistent with the United States Congress legislation in the area of hospital care.

The foregoing could be concisely reduced to the thought that the Union didn't provide accommodation to Burns because they didn't try to. With no attempted accommodation at all, the Ninth Circuit correctly held that they had failed their burden under 701(j).

<sup>2</sup> Public Law 93-360.

<sup>3</sup> Revised Code of Washington, 41.56.122; Civil Statute, 243-666 of the State of Oregon; Civil Statute, 59-1603 of the State of Montana; A.S. 23.40.225.

**III. 701(j) creates equality in employment by equal treatment of Burns to similarly situated employees.**

The Union and SPTC next argue, although they attempted no accommodation, this Court should grant certiorari because any accommodation would not leave Burns similarly situated as other employees. In support of this proposition, they cite this Court's decision in *Trans World Airlines, Inc. v. Hardison* 432 U.S. 63 (1977). *Hardison*, supports, rather than undermines the holding in *Burns*. Basically, *Hardison* involves a defense that the company and union had taken adequate steps to accommodate the employee's religious beliefs, and to construe the statute to require further efforts of accommodation would constitute undue hardship, *supra*, at 432 U.S. 77. At Hardison's request, he bid for a job in Building 2 where he could work the day shift. While he had sufficient seniority under the applicable collective bargaining agreement to avoid work on Saturdays in Building 1, he ranked next to last on the seniority list in Building 2. Hardison's religion forbid him to work on Saturdays. After Hardison's transfer to Building 2, he was asked to work on Saturdays when other employees went on vacation. When he refused, he was fired. The district court found that TWA attempted to accommodate Hardison by:

- (1) agreeing with the Union to permit Hardison to swap time off with other employees;
- (2) excusing him on religious holidays if he was willing to fill in on the employees' other religious days; and,
- (3) attempting to find him another job. *Hardison v. Trans World Airlines* 375 F.Supp. 877, 878 (W.C. Mo., 1974); 432 U.S. at 68-9.

None of these accommodations succeeded. The district court found that further accommodation would have caused TWA undue hardship because TWA only had two remaining choices. One was to let Hardison have his day off and attempt to replace him. The court found this to be extremely difficult. Hardison's job was essential; to replace him would have left another position vacant; to employ someone not already assigned to Saturday work would have caused eight hours premium pay each Saturday; to have let the position empty would have impaired the supplying of parts for essential airline operations. *Id.* 375 F.Supp. at 889, 891. A second alternative, forcing other employees to trade shifts or jobs would have violated contractual seniority provisions and would have subjected TWA to grievances. *Id.* at 899. "Title VII", the district court said, "does not force TWA to impose upon other employees because of one employee's religious beliefs." *Id.* at 891.

The Supreme Court largely adopted the district court's analysis of the facts and its interpretation of the law. The Court agreed with the district court that TWA "had done all that could possibly be expected within the bounds of the seniority system", 432 U.S. 77, "all that it could do . . . without incurring substantial cost or violating the seniority rights of other employees." *Id.* at 83, n. 14.

The Court's theme that to accommodate an employee's religious beliefs by discriminating against other employees reflects the court's concern that Title VII be used to create full equality for persons irrespective of religion or belief. In the present case, 701(j) creates equality by allowing an employee whose religion forbids financial support to unions to allocate the same amount that union supporters pay as dues to an equally



legitimate socially desirable, charitable organization. That interpretation ensures that every employee is taxed identically, that each suffers the same loss of income. At the same time, it ensures the employee with strong religious convictions can be true to his faith, but without imposing additional burdens on employees with contrary beliefs. Under *Hardison*, *Cooper*, *Yott*, *McDaniel*, and *Anderson*, reasonable accommodation demands such balance of beliefs where the burden on each employee remains the same after accommodation as before.

To hold, as would the Union, that Mr. Burns should sacrifice either his employment or his beliefs when he is prepared to pay the financial burden as other employees, constitutes discrimination and inequality and violation of the statute which provides that "similarly situated employees are not to be treated differently solely because they differ with respect to . . . religion". *Hardison*, *supra*. It is fair to assume when this Court denied certiorari in *Cooper*, after its decision in *Hardison*, that it was satisfied that both cases read together present a correct interpretation of 701(j) in union security cases.

#### IV. *Other reasons against granting certiorari.*

The Union and SPTC also allege a long shopping list of miscellaneous reasons why the Court should grant certiorari. Basically, each of these issues have been decided against them by the lower appellate courts in general, or have been decided against them specifically in *Cooper*.

(1) Petitioners urge that 701(j) does not include accommodation regarding union security issues. Cf. *Cooper* 553 F2d at 168; *Yott* 501 F2d at 402;

(2) That 701(j) adds nothing to the constitutional argument

prior to the passage of 701(j). Cf. *Hammond v. United Paper Workers* 462 F2d 174, 175 (CA 6, 1972);

(3) §2, Eleventh could not be altered in any way by subsequent legislation. Cf. *Cooper* 553 F2d at 169; and,

(4) Enactment of Section 19 of the Hospital Amendment shows that 701(j) was not meant to cover religious beliefs regarding union dues. Cf. *Cooper* 553 F2d at 169-70.

#### CONCLUSION

The UTU and SPTC's position that union security authorized by §2, Eleventh of the Railway Labor Act is the impregnable pivotal point of our labor policy is untenable. The interest raised for union security and under Title VII can be read side by side, and they can be harmonized by implementing Congress' mandate so that discrimination is removed from the field of employment. Harmonizing necessarily requires the relinquishment of majoritarian rights only to the extent that would not cause undue hardship.

The Union and employer attempted no accommodation at all. They did not carry their burden of proof, and wholly failed to demonstrate any undue hardship. The court consistently held that it is their burden to accommodate or show that undue hardship would exist by any form of reasonable accommodation.

The courts for the Fifth, Sixth, Seventh and Ninth Circuits are in complete agreement that under Title VII there exists a duty to accommodate without undue hardship. The Supreme Court of the United States says there exists a duty for the union and company to accommodate short of incurring undue hardship. It is implicit in this conclusion that accommodation is owed, and that 701(j) reaches and complements §2, Eleventh as a pro-



nouncement of today's National Labor Policy. The UTU and SPTC failed to carry their burden of proof that a reasonable accommodation to Burns' religious beliefs would constitute undue hardship.

For the above reasons, the Writ of Certiorari should be denied.

Respectfully submitted,

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A-1

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 76-1188

Duane Terrell Burns,  
*Plaintiff-Appellant,*  
v.

Southern Pacific Transportation Co., et al.,  
*Defendants-Appellees.*

*Appeal from the United States District Court  
for the District of Arizona*

Before: HUFSTEDLER and GOODWIN, Circuit Judges,  
and LUCAS\*, District Judge

**OPINION**

HUFSTEDLER, Circuit Judge:

Burns brought this Title VII action seeking to enjoin his employer, Southern Pacific Transportation Company ("Company") and the United Transportation Union and its local ("Union") from discharging him for his refusal to pay union dues and assessments in violation of his sincerely-held religious beliefs. The district court held that the Union and the Company had fulfilled their statutory duties of accommodation required by the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000e *et seq.*, particularly § 2000e(j) (1970 Supp. 2)) when they offered to relieve Burns of his obligation to belong to the Union and that no further accommodation was required because payment of the dues-equivalent to a charity worked an undue hardship upon the Union and its members by relieving Burns of paying his fair share of union expenses. The district court also rejected Burns' attack upon the constitutionality of the application to him of §2, *Eleventh* of the Railway Labor Act

\* Honorable Malcolm M. Lucas, United States District Judge, Central District of California, sitting by designation.

(45 U.S.C. §152, *Eleventh* (1970)). We reverse in part, holding that the Company and the Union failed to carry their burden of proving good faith efforts reasonably to accommodate Burns' religious beliefs and their further burden of proving that no accommodation reasonably could be made without undue hardship to the Union or the Company. We affirm the district court's rejection of Burns' constitutional claim.

Burns has been employed by the Company since 1955; he is classified as a brakeman and conductor. For many years he has also been a member of the Seventh Day Adventist Church. He withdrew from the Union on February 26, 1974, when he became aware that his affiliation with the Union and his payment of dues to the Union were in direct conflict with the teachings of his Church. The district court found on ample evidence that Burns has a sincere religious belief in the teachings of his Church forbidding membership in labor organizations and contributions to such organizations. He requested an informal accommodation to his religious beliefs and asked to meet personally with representatives of the Union and the Company. He has offered to pay the equivalent of union dues and assessments to a designated charity and to offer proof to the Union of such charity payments. The Union and the Company were willing to waive any requirement of membership in the Union and participation in union activities, but both declined to consider any accommodation which would involve Burns' not paying union dues and assessments.

Upon refusal by the Union and the Company to consider any accommodation in respect of dues and in anticipation of his discharge, Burns filed charges of religious discrimination with the Equal Employment Opportunity Commission in Arizona.

Thereafter, he obtained a right-to-sue letter, and he filed this complaint in the district court on March 1, 1974. The original complaint sought injunctive relief, attorney's fees, and damages. After the Company and the Union agreed that Burns could continue to work while the litigation was pending, the complaint was amended to seek only injunctive relief from discharge and attorney's fees. The case was tried by the court without a jury, resulting in judgment against him, and Burns appeals.

At all material times the Company and the Union have had in effect a Union security agreement requiring all employees, as a condition of employment, to be members in good standing of the Union. A companion agreement between the predecessor of the Union and the Company contained a provision which gives some relief to religious objectors by stating that an employee having religious scruples against joining a union "will . . . be deemed to have met the requirements of the Union Shop Agreement if he agrees to and does pay initiation fees, periodic dues and assessments of the organization representing his craft or class signatory hereto."

Burns fully met his burden of proving a *prima facie* case of religious discrimination in violation of Title VII. He proved that he had a bona fide belief that union membership and the payment of union dues were contrary to the teachings of his Church. He informed his employer and the Union about his religious views. He was thereafter threatened with discharge for his refusal to pay union dues and assessments. (*Anderson v. General Dynamics Convair Aerospace Division*, (9th Cir. 1978) . . . F.2d . . .) Thereafter the burden was on the Company and the Union to prove that they made good faith efforts to

accommodate Burns' religious beliefs, that the efforts were unsuccessful, and that they were unable reasonably to accommodate those beliefs without undue hardship. (42 U.S.C. § 2000e(j); *Anderson v. General Dynamics Convair Aerospace Division, supra.*)

We begin our analysis with *Trans World Airlines v. Hardison* (1977) 432 U.S. 63. The Court noted there that Congress did not define the degree of accommodation which is required of an employer under section 701(j) of the Civil Rights Act (432 U.S. at 73-76), but that the legislative history is at least clear that "Congress intended to require some form of accommodation" and to change prior case law which had condoned an employer who "had not made any effort whatsoever to accommodate the employee's religious needs." (*Id.* at 74, n.9) Thus, the employer is required to take some steps in negotiating with the employee to reach a reasonable accommodation to the particular religious beliefs at issue. (*Anderson v. General Dynamics Convair Aerospace Division, supra*, ... F.2d at ...; *McDaniel v. Essex International, Inc.* (6th Cir. 1978) 571 F.2d 338, 341-42.)

Once the employer has made more than a negligible effort to accommodate the employee (*Trans World Airlines v. Hardison, supra*, 432 U.S. at 77) and that effort is viewed by the worker as inadequate, the question becomes whether the further accommodation requested would constitute "undue hardship." Once again, this term is not defined by the Civil Rights Act, but the burden of proving undue hardship rests upon the employer or union. The *Hardison* Court found that the employer had demonstrated undue hardship where the accommodation requested by the employee (a four-day work week) would have effectively required preferential treatment on the basis of

religion for Sabbatarians, causing sacrifices or dislocation in the work schedules of fellow-workers or requiring the employer to hire outsiders to work Saturday shifts at "premium wages." (*Id.* at 81-84.) The Court held that where the impacts upon co-workers or costs are greater than *de minimis*, undue hardship is demonstrated. (*Id.* at 84.) We now apply the *Hardison* principles to the facts herein.

The Company and the Union made no effort to accommodate Burns' particular religious beliefs. In effect, they informed Burns that his only alternative was to accept the terms of the existing contract which freed him from the obligation of membership if he paid dues to the Union. Burns' religious beliefs, however, forbade payment of dues to the Union. Neither the Company nor the Union attempted to accommodate this belief. Their position therefore is that no accommodation is possible when an employee refuses to pay union dues and assessments because non-payment of such sums places an undue hardship on the Union as a matter of law or under proof offered in the case.

We rejected the contention that the substitution of payments to a charity for payment of union dues was an undue hardship as a matter of law in the companion case, *Anderson v. General Dynamics Convair Aerospace Division, supra.*<sup>1</sup> (*Accord McDaniel v. Essex International, Inc., supra*, 571 F.2d 338.) We therefore turn to the examination of the record to decide whether the Union and the Company proved as a matter of fact

<sup>1</sup> No difference in result can be based upon the fact that the Union security agreement considered in *Anderson* responded to § 8(a)(3), (b)(2) of the Taft-Hartley Act, 29 U.S.C. § 158(a)(3), (b)(2) (1970) and that of the Union security provisions in this case were authorized under the similar provisions of Section 2, *Eleventh* of the Railway Labor Act, 45 U.S.C. § 152. (*McDaniel v. Essex Internat'l, Inc.* (6th Cir. 1978) 571 F.2d 338.)



that substituted payments would create an undue hardship to the Union and the Company.

Appellees' hardship case was based in part upon opinions that "free rider" problems could cause serious dissention among employees, resulting in inefficiency of operation. These witnesses, however, did not attempt to relate a general sentiment against free riders either to Burns or to a person who, like Burns, made payments equivalent to union dues to a charitable organization. The Union and the Company also argued that, based on unofficial and unscientific polls, employee dissatisfaction with persons who were free riders or who received different treatment of any kind was not hypothetical. We are not persuaded. We agree with the Sixth Circuit, speaking in *Draper v. U.S. Pipe & Foundry Co.* (6th Cir. 1976) 527 F.2d 515, 520:

"We are somewhat skeptical of hypothetical hardships that an employer thinks might be caused by an accommodation that has never been put into practice. The employer is on stronger ground when he has attempted various methods of accommodation and can point to hardships that actually resulted."

As we noted in *Anderson V. General Dynamics Convair Aerospace Division, supra*, undue hardship requires more than proof of some fellow-worker's grumbling or unhappiness with a particular accommodation to a religious belief. (... F.2d at ....) An employer or union would have to show, as in *Hardison*, actual imposition on co-workers or disruption of the work routine.

The Union also contends that it would suffer substantial financial hardship if Burns were permitted to pay the equivalent of union dues and assessments to a charitable fund

because the costs of collective bargaining would be disproportionately borne by union members and because the administrative costs in keeping track of Burns' charitable contributions would be more than *de minimis*. Excusing Burns from paying his dues to the Union would deprive the Union of \$19 per month. The allocation of dues payments was: \$7 to the Local, distributed half for salaries and expenses and the other half to the Local's Committee of Adjustment; \$5 to the International Union; \$4 to the Union's General Committee of Adjustment; and \$3 to the State Legislative Board. There was testimony from one of the Union officers that the loss of Burns' \$19 per month dues "wouldn't affect us at all." In our view, the loss of dues to the Union is *de minimis*, even if so necessary to its fiscal well-being that its equivalent would be collected from the Local's 300 members at a rate of 2 cents each per month. The district court did not decide to the contrary as in *Hardison*. (See 432 U.S. at 84, n.15.) Rather, the district court accepted the Union's contention that accommodating Burns would open the gate to excusing vast numbers of persons who claimed to share Burns' beliefs, thence resulting in a greater than *de minimis* burden on the Union and Union members. The record does not support this speculation. The evidence was that only three persons subject to the Local's jurisdiction were Seventh Day Adventists.<sup>2</sup> If, in the future, the expressed fear of widespread refusal to pay union dues on religious grounds should become a

<sup>2</sup> The concern that quantities of religious objectors would deplete the financial resources of the Union is not shared by George Meany, President of the AFL-CIO. A letter from George Meany was introduced into evidence in which Mr. Meany expressed his opinion that religious views such as those of Burns should be accommodated to respect individual religious reservations in the administration of union security agreements and suggesting that an appropriate method for accommodation would be the payment of the equivalent of dues to a union charitable fund or to an agreed-upon charity.

reality, undue hardship could be proved.<sup>3</sup> But on the present record, no substance was given to these apprehensions. (See *McDaniel v. Essex International, Inc.*, *supra*, 571 F.2d at 343-44.)

We quickly dismiss the contention that administrative difficulties in accommodating Burns' religious beliefs would cause undue hardship. No evidence was presented on this point, other than testimony that keeping track of Burns' charitable contributions would entail some bookkeeping. No one testified concerning the cost of the minor modifications which would be thereby required, and we cannot say that the modest amount of paper work would impose even *de minimis* cost.

The district court correctly rejected Burns' constitutional challenge to section 2, *Eleventh* of the Railway Labor Act. As Burns necessarily concedes, the constitutional issue has been repeatedly resolved against him. (E.g., *Yott v. North American Rockwell Corp.* (9th Cir. 1974) 501 F.2d 398, 403-04.)

For the first time on appeal, the Company has challenged the constitutionality of § 701(j) of the Civil Rights Act, as amended, on the ground that it violates the establishment clause of the First Amendment. We decline to reach the constitutional question under these circumstances. If the Company is so inclined, it can raise the constitutional question in the district court following remand.

Burns is entitled to a reasonable attorney's fee as a part of his

<sup>3</sup> See *Trans World Airlines v. Hardison*, *supra*, 432 U.S. at 31 (it would be anomalous to conclude that reasonable accommodation requires actions depriving other employees of their rights); see also *id.* at 90 (Marshall, J., dissenting) ("important constitutional questions would be posed by interpreting the law to compel employers (or fellow-employees) to incur substantial costs to aid the religious observer.").

costs, pursuant to 42 U.S.C. §2000e-5(k), the amount of which shall be fixed by the district court on remand.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with the views herein expressed.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 77-2180

David Anderson,  
*Plaintiff-Appellant,*

v.

General Dynamics Convair Aerospace Division, a corporation,  
and International Association of Machinists and Aerospace  
Workers, AFL-CIO, Silvergate District Lodge 50, an association,  
*Defendants-Appellees.*

*Appeal from the United States District Court  
for the Southern District of California*

Before: HUFSTEDLER and GOODWIN, Circuit Judges,  
and LUCAS\*, District Judge

OPINION

HUFSTEDLER, Circuit Judge:

Anderson, a former employee of General Dynamics Convair Aerospace Division ("General Dynamics") brought this title VII action against General Dynamics and the International Association of Machinists and Aerospace Workers, AFL-CIO, Silvergate District Lodge 50 ("Union"), claiming that he had been discharged in violation of the religious discrimination provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(a) and 42 U.S.C. § 2000e(j)). He sought reinstatement of employment and benefits, an injunction restraining the Union from discriminating against him, back pay and allowances, reasonable attorney's fees, costs and interest. The district court held that no accommodation to Anderson's religious beliefs was possible because his offer to contribute the amount of Union dues to a charity of his choice, rather than to the Union or charities of

\* Honorable Malcolm M. Lucas, United States District Judge, Central District of California, sitting by designation.

the Union's choice, imposed an undue hardship on the Union. (*Anderson v. General Dynamics Convair Aerospace Division* (C.D. Cal. 1977) 430 F. Supp. 418.)

The critical issue on appeal is whether the Union carried its burden of proving that it could not reasonably accommodate Anderson's religious convictions without undue hardship on the Union. We conclude that it did not carry its burden of proof.

Anderson was first employed by General Dynamics on October 11, 1956. In 1959, he became a member of the Seventh Day Adventist Church. A tenet of the Church is that its members should not belong to or contribute to labor organizations. Anderson has at all material times held a sincere belief in that tenet. From 1959 until April 3, 1972, the collective bargaining agreement between General Dynamics and the Union did not require General Dynamics to employ only / / persons who were union members. On April 3, 1972, however, the Union and General Dynamics entered into a collective bargaining agreement, which contained the following provision:

"Any employee on the Company's active payroll who is in the bargaining unit and is not a member of the Union on 3 April, 1972, shall, as a condition of continued employment in the bargaining unit, join the Union within ten (10) days after the thirtieth (30th) day following the effective date of this agreement, and shall maintain his membership as provided in Paragraph A above."

Anderson did not join the Union within the time limitation provided by the security clause of the bargaining agreement. On May 25, 1972, the Union notified Anderson of his delinquency under the agreement. On June 12, 1972, Anderson informed General Dynamics, which, in turn, informed the Union, that his religious beliefs prohibited him from joining the Union. Two



days later, the Union requested that Anderson be discharged for failure to abide by the provisions of the security clause. On June 16, 1972, General Dynamics discharged Anderson from his employment for the sole reason that he refused to become a member of or contribute to the Union.

The parties stipulated that neither the Union nor General Dynamics offered Anderson any specific alternatives or accommodations with respect to joining the Union, and both the Union and General Dynamics told Anderson that he had to follow the collective bargaining and join the Union. The parties also stipulated that Anderson had made known to his fellow workers, including his shop committeemen, that he would not join the Union and that he would not contribute to the Union, unless he could insure that his contributions went to a recognized charity.

Anderson promptly filed a complaint with the Equal Employment Opportunity Commission, which deferred the matter to the California Fair Employment Practice Commission ("FEPC"). The FEPC referred the case back to the EEOC. After finding reasonable cause to believe that Anderson's discrimination charge was well-founded, the EEOC attempted conciliation. When conciliation failed, EEOC issued a right to sue letter on October 5, 1975. Anderson timely filed a complaint in the district court. The district court rendered judgment against him, and he appeals.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) provides in pertinent part as follows:

"It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any indi-

vidual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin. . . ."

Similar conduct by a labor organization is also proscribed by the Act. (42 U.S.C. § 2000e-2(c).)<sup>1</sup>

In 1972, Congress enacted 42 U.S.C. § 2000e(j), incorporating the substance of the 1967 EEOC guidelines (29 C.F.R. § 1605.1). The section provides:

"The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

As the Supreme Court has explained, in *Trans World Airlines, Inc. v. Hardison* (1977) 432 U.S. 63, 74:

"The intent and effect of this definition was to make it an unlawful employment practice under § 703(a)(1) for an employer [and also for a union] not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees." Neither Congress nor the EEOC has attempted to spell out any precise guidelines for

<sup>1</sup> Section 2000e-2(c) provides as follows:

"It shall be an unlawful employment practice for a labor organization —

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section."

determining when the "reasonable accommodations" requirement has been met, nor the kinds of circumstances under which a particular accommodation may cause hardship that is "undue." These decisions must be made in the particular factual context of each case because the decision ultimately turns on the reasonableness of the conduct of the parties under the circumstances of each case. (*Redmond v. GAF Corp.* (7th Cir. 1978) 574 F.2d 897, 902-03; *Williams v. Southern Union Gas Co.* (10th Cir. 1976) 529 F.2d 483, 489. Cf. *Trans World Airlines, Inc. v. Hardison*, *supra*, 432 U.S. at 74-75.)

We, as well as other courts, have recognized that there is both tension and conflict between the legitimate interests of the Union in preserving the benefits of union security agreements, which are valid under the National Labor Relations Act (29 U.S.C. § 158), and the accommodation requirements of Title VII (e.g., *Yott v. North American Rockwell Corporation* (9th Cir. 1974) 501 F.2d 398; *McDaniel v. Essex Intern'l, Inc.* (6th Cir. 1978) 571 F.2d 338; *Cooper v. General Dynamics, Convair Aerospace Division* (5th Cir. 1976) 533 F.2d 163, 166-69). The balance has been struck, however, in favor of the elimination of discrimination in employment practices and requiring accommodation of religious practices, absent proof by the Union, the employer, or both, that reasonable accommodation cannot be made without an undue hardship to the Union or to the employer. (*Trans World Airlines, Inc. v. Hardison*, *supra*, 432 U.S. 63; *McDonald v. Santa Fe Trail Transportation Co.* (1976) 427 U.S. 273; *Franks v. Bowman Transportation Co.* (1976) 424 U.S. 747.)

To establish a prima facie case of discrimination under §§ 2000e-2(a)(1) and (j) Anderson had the burden of pleading and proving that (1) he had a bona fide belief that union membership

and the payment of union dues are contrary to his religious faith;<sup>2</sup> (2) he informed his employer and the Union about his religious views that were in conflict with the Union security agreement; and (3) he was discharged for his refusal to join the Union and pay union dues. (E.g., *Yott v. North American Rockwell Corp.*, *supra*, 501 F.2d 398; *Redmond v. GAF Corp.*, *supra*, 574 F.2d at 901.)<sup>3</sup> Both by stipulations of fact and by evidence introduced at trial, Anderson established his prima facie case.

The burden was thereafter upon General Dynamics and the Union to prove that they made good faith efforts to accommodate Anderson's religious beliefs and, if those efforts were unsuccessful, to demonstrate that they were unable reasonably to accommodate his beliefs without undue hardship. *Id.* at 902.

Neither the Union nor General Dynamics did anything to accommodate Anderson's religious beliefs. They contend that their failure to take any steps to accommodate is excused because Anderson insisted on making an equivalent payment to a charity of his own choice, rather than paying the equivalent fund to the Union for charitable purposes. They rely heavily upon the district court's finding that Anderson's refusal to pay his charitable

<sup>2</sup> We have no occasion in this case to determine the breadth of the "beliefs" or "practices" protected by section 2000e(j) or to grapple with bona fides of a particular employee's religious convictions. Both of these facts are conceded for the purpose of this case. We are unaware, however, of the Supreme Court's admonition in *Fowler v. Rhode Island* (1953) 345 U.S. 67, 70 that "it is no business of courts to say . . . what is a religious practice or activity . . ." See also *Redmond v. GAF Corp.*, *supra*, 574 F.2d at 900.

<sup>3</sup> We agree with the Seventh Circuit that the employee who has provided his employer with sufficient information to put it on notice of his religious needs is not required, as part of his prima facie case, to show that he thereafter made some efforts either to compromise or accommodate his own religious beliefs before he can seek an accommodation from his employer. (*Redmond v. GAF Corp.*, *supra*, 574 F.2d at 901-02 ("While we feel plaintiff should be free, even encouraged, to suggest to his employer possible ways of accommodating his religious needs, we see nothing in the statute to support the position that this is part of plaintiff's burden of proof." *Id.* at 901.)

contribution to the Union was based on his general distrust of unions, rather than on religious beliefs. Finally, they argue that Anderson's suggestion of accommodation would work undue hardship as a matter of law because Anderson would become a "free rider."

The burden was upon the appellees, not Anderson, to undertake initial steps toward accommodation. They cannot excuse their failure to accommodate by pointing to deficiencies, if any there were, in Anderson's suggested accommodation. Thus, Anderson's motivation in selecting his own charity is irrelevant. Moreover, the district court's finding is contrary to the parties' stipulation of fact that teachings of Anderson's Church forbade making contributions to unions.

Appellees are left with the argument that Anderson's refusal to pay either his union dues or the equivalent of union dues to the Union for a charity of the Union's choice would be an undue hardship as a matter of law because the means of accommodation would create "free riders." The district court accepted this argument; we do not. We follow the Sixth Circuit in *McDaniel v. Essex International, Inc.*, *supra*, 571 F.2d 338, with which our case is almost identical.

McDaniel was a Seventh Day Adventist who had a bona fide religious belief that membership in the union and the payment of union dues was a violation of her religion. She requested her employer and the union to make an accommodation to her religious beliefs, and she suggested that she would be willing to contribute an amount equal to the union dues to a non-sectarian charity to be chosen by the union and her employer. Neither responded to her request, and she was discharged for her failure to adhere to the requirements of the union security agreement.

The district court granted summary judgment in favor of the union and the employer, accepting their contentions that the accommodation that the employee suggested would work an undue hardship on the union as a matter of law because non-payment of union dues adversely affected the "financial core" of the union and thus impaired its ability to fulfill its collective bargaining functions. The *McDaniel* court reversed. The court pointed out that the union security provisions of the Taft-Hartley Act (29 U.S.C. § 158(a)(3), (b)(2) (1970)) "do not relieve an employer or a union of the duty of attempting to make reasonable accommodation to the individual religious needs of employees. [citations omitted]. The burden is on Essex and IAM to make an effort at accommodation and, if unsuccessful, to demonstrate that they were unable to reasonably accommodate the plaintiff's religious beliefs without undue hardship. The district court found that it would work an undue hardship on IAM to forego the dues payment by the plaintiff. There is no factual basis in the record for this conclusion. In *Draper v. U.S. Pipe & Foundry Co.*, *supra*, [(6th Cir. 1976) 527 F.2d 515], this court expressed its skepticism concerning 'hypothetical hardships' based upon assumptions about accommodations which have never been put into practice. 527 F.2d at 520." (*Id.* at 343.)

Here, as in *McDaniel*, neither the Union nor the employer offered any evidence to prove that union members thought that a person was a free rider if he paid the equivalent of union dues to a charity, nor was there any evidence offered to prove as a fact that the accommodation of Anderson would otherwise have been an unduly difficult problem for the Union. It relied simply upon general sentiment against free riders.

Undue hardship means something greater than hardship.



Undue hardship cannot be proved by assumptions nor by opinions based on hypothetical facts. Even proof that employees would grumble about a particular accommodation is not enough to establish undue hardship. As the Supreme Court pointed out in *Franks v. Bowman, supra*, 424 U.S. at 775, quoting *United States v. Bethlehem Steel Corp.* (2d Cir. 1971) 446 F.2d 652, 663: "If relief under Title VII can be denied merely because the majority group of employees, who have not suffered discrimination, will be unhappy about it, there will be little hope of correcting the wrongs to which the Act is directed."<sup>4</sup>

We conclude that the Union and General Dynamics failed to carry their burden of proof, and, accordingly, the judgment must be reversed.<sup>5</sup> We also conclude that Anderson is entitled to a reasonable attorney's fee as part of his costs, pursuant to 42 U.S.C. § 2000e-5(k), the amount of which shall be fixed by the district court on remand.

Reversed and remanded for further proceedings consistent with the views herein expressed.

<sup>4</sup> Appelles can take no comfort from the observation in *Yott v. North American Rockwell Corp., supra*, 501 F.2d at 403: "If appellees are able to demonstrate that any suggested accommodation would impose undue hardship on the Union or the employer's business, then Yott's discrimination claim should fail." We reversed in *Yott* because the appellees had not demonstrated that the suggested accommodation would impose undue hardship, and, as we have explained, the appellees in this case have not done so either.

<sup>5</sup> The appellees attacked the constitutionality of the provisions of Title VII in issue in this case, and they renew that attack, at least obliquely, on appeal. The district court did not reach any constitutional issue, and under these circumstances we also decline to address any constitutional questions.

The bill was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. MURPHY of New York. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed, H.R. 9794.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

#### THE ENVIRONMENTAL IMPACT OF PRESIDENT CARTER'S ENERGY PROPOSALS

(Mr. BROWN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of California. Mr. Speaker, in recent months I have been concerned about the environmental impact of President Carter's energy proposals. As chairman of the House Science and Technology Subcommittee on Environment and the Atmosphere, I have held hearings on environmental problems and the new energy plan, focusing on both the coal and nuclear fuel cycles.

In addition, I have asked the Congressional Research Service to analyze the degree to which energy-related Federal research and development is meeting our needs under President Carter's energy plan.

My main interest has been with the increased use of coal and resultant environmental effects of large quantities of nitrogen oxides and sulfur oxides emitted into the air.

It seems clear, as a result of all of our investigations, that we may have had a mismatch in our environmental funding areas. We appear to have been funding projects in problem areas where there is little perceived concern.

In the coming year, the Environment and Atmosphere Subcommittee will be examining this problem and will make recommendations for better utilization of our Federal environmental monitoring program. Without an adequately funded and coordinated monitoring program, we never will be satisfied that our pollution control efforts are properly directed.

I welcome your input in this area and commend to you the report our subcommittee issued this week, "Environmental Challenges of the President's Energy Plan: Implications for Research and Development."

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

After all motions to suspend the rules have been entertained and debated and after those motions to be determined by "nonrecord" votes have been disposed of, the Chair will then put the question on each motion on which the further proceedings were postponed.

#### CONSCIENTIOUS OBJECTION TO JOINING A LABOR ORGANIZATION

Mr. THOMPSON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3384) to amend the National Labor Relations Act to provide that any employee who is a member of a religion or sect historically holding conscientious objection to joining or financially supporting a labor organization shall not be required to do so.

The Clerk read as follows:

H.R. 3384

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 19 of the National Labor Relations Act is amended as follows: (a) by striking out the words "of a health care institution" after the words "Any employee"; and (b) by adding a new sentence at the end thereof: "Proof of such payments must be made on a monthly basis as a condition of continued exemption from the requirement of financial support to the labor organization, subject to such rules and regulations as the Board may prescribe."

The SPEAKER pro tempore. Is a second demanded?

Mr. ERLÉNBERG. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. THOMPSON) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. ERLÉNBERG) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. THOMPSON).

Mr. THOMPSON. Mr. Speaker, I yield myself 5 minutes.

(Mr. THOMPSON asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON. Mr. Speaker, H.R. 3384 reflects an accommodation between basic rights created by the National Labor Relations Act and certain religious beliefs which prohibit membership in a union. It extends an exception that was made for employees in the health care industry to all employees who are covered by the National Labor Relations Act.

The National Labor Relations Act is based on the concept of majority rule. The union designated or selected for the purposes of collective bargaining "by a majority of the employees in a unit appropriate for such purposes" is the exclusive bargaining agent for all employees in the bargaining unit; and remains such unless and until it is voted out by a majority of the employees in a secret ballot election called expressly for that purpose.

An obligation of fair representation accompanies the right of exclusive rep-

resentation, and the union selected by the majority must represent all employees in the bargaining unit fairly and without hostile discrimination; whether or not the employee is a union member, whether or not the employee pays union dues.

To minimize the problem of the "free rider," that is the employee who would enjoy union representation without paying his fair share of the costs, section 8(a)(3) permits but does not require the employer and the union to agree that all employees must pay fair and reasonable union dues as a condition of continued employment.

This statutory framework, generally fair, has created a conflict between the dues-paying union member on the one hand, and employees who object to the payment of dues, because of religious beliefs.

H.R. 3384 seeks to accommodate these various interests and concerns.

H.R. 3384 extends and expands section 19 of the National Labor Relations Act, now limited to the health care industry. The amendment would apply to any person who can produce adequate verification of membership in a bona fide religion which historically has held conscientious objection to joining or financially supporting a labor organization. It would permit such a person to refrain from joining or financially supporting the labor organization on the condition that instead, the person would be required to pay in lieu of periodic dues and initiation fees an equivalent sum to a nonreligious charitable fund. Proof of such payments would be required on a monthly basis as a condition of continued exemption.

Members of the Seventh-day Adventist Church, for example, cannot, consistent with the traditional and historic teachings of that church, pay dues to unions. Other churches share the same traditional belief of prohibiting cooperation with the union selected by majority vote to represent their interests.

The bill would accommodate the religious beliefs of these persons and thereby reconcile the National Labor Relations Act with section 701(j) of the Equal Employment Opportunity Act as recently construed in *Cooper v. General Dynamics*, 553 F.2d 163, Fifth Circuit decided June 9, 1976. Thus, the bill reflects the legislative determination that the alternative to the payment of union dues provided in the bill—

Reasonably accommodate /s/ . . . an employee . . . religious observance or practice without undue hardship.

Title VII, section 701(j), 43 United States Code, section 2000e(j). The option of allowing a qualifying individual the ability to pay the equivalent of dues to a nonreligious charity clearly constitutes a "reasonable accommodation" to the individual's religious beliefs.

The bill has widespread support and virtually no opposition. The labor movement has recognized that this bill represents a fair and just accommodation. Those who represent the members of the religious groups that are potentially affected by this bill are strongly suppor-



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tive of the measure. And, of course, the bill was supported unanimously by the Education and Labor Committee. It is clear that H.R. 3384 deserves the overwhelming support of this body and I urge its passage.

Mr. DUNCAN of Oregon. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. Mr. Speaker, I congratulate the chairman, the gentleman from New Jersey (Mr. THOMPSON), the gentleman from Illinois (Mr. ERLENBORN), and the gentleman from California (Mr. DON H. CLAUSEN) for demonstrating this morning that what appeared to be irreconcilable differences can be reconciled by men of good will. I think the labor movement pointed us in this direction because they have for years approved on an ad hoc basis this solution to a difficult problem.

Finally I would like to call to the attention of this body the work my distinguished predecessor, Mrs. Edith Green, performed in this field in the 1960's when she was pointing in this direction. She should take great satisfaction that her objective has finally been accomplished.

Mr. THOMPSON. I hope the gentleman, our former distinguished colleague, is aware of this action. I certainly respected her attempt at that time. As a matter of historical fact, the former attempt to amend the act in this manner was not objected to by me on any ground of principle. It was objected to on the ground that it was not germane to the pending legislation.

Mr. DUNCAN of Oregon. If the gentleman will yield further, I would just like to say that the gentleman's contribution to this solution to the problem has been a very substantial one. He deserves a great deal of credit from those members of the religious organizations affected.

Mr. THOMPSON. I thank the gentleman from Oregon.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I join the others in complimenting the distinguished gentleman from New Jersey, the chairman of the subcommittee that reported this legislation and all the Members on both sides of the aisle that reported it. It was unanimously reported from the Committee on Education and Labor, as the gentleman says. It is a measure that deserves the unanimous support of this House.

Mr. THOMPSON. Mr. Speaker, I thank the gentleman from Washington. I might also add to the list of the gentleman from Oregon, our distinguished colleague, the gentleman from California (Mrs. PERRIS), who has been very active and interested in the outcome of this measure.

Mr. AUCCOIN. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from Oregon.

(Mr. AUCCOIN asked and was given

permission to revise and extend his remarks.)

Mr. AUCCOIN. Mr. Speaker, I rise today to associate myself with the aim of H.R. 3384 and the concept of the "conscience clause."

While I was a member of the Oregon Legislature, I cast a vote in favor of a similar provision in State law and it is a pleasure to do so again, this time in Congress.

Working men and women should not have to choose between a job or their religion. Such a choice abridges the freedom of religion, one of the many basic rights we cherish and defend in this great Nation of ours.

It is a compliment to the gentleman from New Jersey, Mr. THOMPSON, and to the gentleman from Illinois, Mr. ERLENBORN, that this bill has been brought to the House floor expeditiously and with bipartisan support following the consideration of H.R. 8410, the National Labor Relations Act.

I also believe organized labor, and specifically the AFL-CIO, has shown wisdom in acknowledging the precedence of a conscience objection against joining a labor organization. Labor's accommodating position, which still preserves the integrity of the basic bargaining unit, is truly commendable.

Mrs. LLOYD of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON. I yield to the distinguished gentleman from Tennessee. (Mrs. LLOYD of Tennessee asked and was given permission to revise and extend her remarks.)

Mrs. LLOYD of Tennessee. Mr. Speaker, I, too, would like to compliment the distinguished chairman of this committee and others who have worked to bring this bill to the floor. I ask everyone to unanimously support it.

Mr. PERKINS. Mr. Speaker, I would like to commend my good friend, the gentleman from New Jersey, the chairman of the Subcommittee on Labor-Management Relations, for bringing the bill H.R. 3384 to the floor of the House. It is an appropriate and desirable amendment to our Nation's labor laws.

The bill is designed to accommodate the religious beliefs of those who conscientiously object to joining or financially supporting a labor organization. It is designed to protect the interests of those belonging to a religious organization or sect which historically holds such beliefs.

Under the National Labor Relations Act, where a union has been designated as the bargaining representative for a group of employees, it is the exclusive bargaining agent for all employees and has an obligation to represent all employees in the bargaining unit fairly and without discrimination. This is true whether or not the employee is a union member and whether or not the employee pays union dues.

Section 8(a) (3) of the act currently permits, but does not require, the employer and the union to enter into an agreement under which all employees must pay fair and reasonable union dues as a condition of continued employment. This statutory provision has

generally worked and has generally been considered fair. It was designed to deal with the so-called "free rider"—the worker who would enjoy union representation without paying a fair share of the cost.

The current law, however, does not adequately meet the problem of the employee who objects to the payment of dues because of religious beliefs. The bill before us today, H.R. 3384, permits such a person to refrain from joining or supporting a labor organization on the condition that that person pay, in lieu of periodic dues and initiation fees, an equivalent sum to a nonreligious charitable fund. This option of allowing a qualified person to pay an equivalent sum in lieu of periodic dues and initiation fees constitutes a reasonable and fair accommodation to individually held religious beliefs.

I urge my colleagues to support this bill.

Mr. ERLENBORN. Mr. Speaker, I yield myself 5 minutes.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, I rise in heartfelt support of this bill (H.R. 3384) and to express my sincere appreciation to the gentleman from New Jersey (Mr. THOMPSON), the chairman of the Labor-Management Relations Subcommittee, for taking this step to fulfill his oft-stated pledge to preserve the religious liberty of even the smallest groups which strictly adhere to matters of conscience.

H.R. 3384 amends section 19—which, I am proud to say, I authored in 1974—of the National Labor Relations Act by providing that all employees—not just employees of health care institutions—who are members of and adhere to teachings of a bona fide religion which has historically held conscientious objections to joining or financially supporting unions will not be required to do so, but may be required to contribute the equivalent in dues and fees to a nonreligious charity. Under H.R. 3384, proof of such payments must also be made.

The drive to enact this type of legislation began more than a decade ago, in 1965, when our esteemed former colleague, Edith Green, offered such an amendment to a bill to repeal section 14(b). Although her efforts were then ruled nongermane to the bill before the House, she and another former Congressman, Floyd Hicks of Washington, continued to press for this legislation throughout their congressional careers.

That drive—crusade, if you will—has been continued by others including myself, Chairman THOMPSON, Mr. DON H. CLAUSEN, Mrs. PERRIS, Mr. DUNCAN of Oregon, and Mr. STUMP, to name a few. H.R. 3384 is the result of these persistent efforts.

I know of no opposition to this bill. It has the acceptance of organized labor and management alike. Organized labor expressed its concern in 1965, when the AFL-CIO's executive council declared "it to be the policy of the AFL-CIO that unions should accommodate themselves to genuine individual religious scruples."

and urged affiliated national and international unions to "adopt procedures for respecting sincere personal convictions as to union membership or activities" and "to undertake to insure that this policy is fully and sympathetically implemented by all local unions."

That position was reinforced a few weeks ago by George Meany, the president of the AFL-CIO, while testifying before the Subcommittee on Labor-Management Relations on H.R. 8410, the proposed Labor Law Reform Act. Mr. Meany stated:

Our position on that I think has been clear for years, and I think it is a fair position on the people who have conscientious objections to joining unions. We think they should participate, that they are the beneficiaries of good contracts where we get good contracts. At the same time we want to recognize their obligations to their particular religion. So we say in effect that they should make a contribution not to us but to some charitable (organization) . . .

In view of our constitutional heritage, one may ask why such an amendment to the NLRA is necessary: Does not the Constitution protect our freedom of religion?

My answer is that yes, it does, but that the developing law has been interpreted to erode that freedom in a manner unforeseen by protectors of that freedom. Just questioning whether the exercise or practice of religious conscience may be denied under our national labor law is sufficient reason to set the record straight and amend our law to be compatible with our first amendment rights.

Specifically, amendment I of the Constitution reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

H.R. 3384 simply removes any question as to whether the first phrase of the first amendment has any meaning under our national labor law.

This bill is necessary to resolve any ambiguity between constitutional rights and union security provisions of our labor laws. In 1947, Congress passed the National Labor Relations Act, which contained in section 8(a) (3) a provision for union security—that provision is similar in content to the subsequently enacted section 2 eleventh of the Railway Labor Act, which represented a change in the direction of railroad industry bargaining away from consistently advocating "freedom of choice." Section 8(a) (3) of the NLRA allows a labor organization and an employer to enter into a collective bargaining agreement requiring, as a condition of continued employment, membership in the labor organization after 30 days, although "membership" has been since defined as the payment of dues and fees, uniformly required.

It is clear that the proviso to section 8(a) (3) was enacted to require the "free rider"—to pay his or her proportionate share of the cost of the benefits provided by collective bargaining. There was to be

a sharing of the burden of maintenance by all of the beneficiaries of union activity. Protections were offered to safeguard the rights of dissenters in that their employment relationship could not be interfered with, except for their failure to tender the periodic dues and fees uniformly required.

Despite that attempt to protect dissenters, there were, unfortunately, no protections offered to a relatively unknown minority—and a very small minority at that. That is the minority of those who hold religious beliefs against joining or financially supporting labor organizations or similar organizations. To my knowledge there are seven such religious groups, including Plymouth Brethren IV and Mennonites. Probably the largest such religion is the Seventh-Day Adventist Church which has about 500,000 members. Others are the Amish, the National Association of Evangelicals, the Christian Missionary Alliance, and the Old German Baptists.

Those with such religious convictions are entitled to the exercise of those convictions. They should not have to choose between their religion and their jobs. Yet they often must. Let me list a few cases:

#### CURRENT SEVENTH-DAY ADVENTIST CASES REGARDING LABOR UNION MEMBERSHIP AGAINST RELIGIOUS CONVICTIONS

##### [A partial listing]

###### DARRELL NOTTELSON

After studying the counsel from the church more fully in 1974, Mr. Darrell C. Nottelson of Menomonee Falls, Wisconsin, an employee of the A. O. Smith Corporation of Milwaukee, requested of the Smith Steel Workers District Affiliated Labor Union, 19809 AFL-CIO, to accommodate his religious beliefs by allowing him to contribute an amount equal to his union dues (about \$6 a month) to a nonunion, nonreligious charity and to discontinue his membership in the union. Mr. Nottelson received unemployment compensation for a time but when it was contested by the A. O. Smith Corporation a hearing officer reversed his eligibility to receive unemployment compensation when Mr. Nottelson was billed for the \$1,600 he had received. Mr. Nottelson lost his full retirement benefits which he would have been eligible for had he worked another two years. He was unable to find employment as a welder because of the high percentage of union shops in his profession. Mr. Nottelson's EEOC complaint served as the basis for a law suit which was heard September 2, 1977 before Judge Robert Warren, the United States District Judge, Eastern District, Wisconsin.

###### WILMA HAYNES

Mrs. Haynes worked as a secretary at the Dallas & Mavis Forwarding Company in South Bend, Indiana, a nonunion employer. Following a successful certification effort by the Teamsters, the union negotiated a contract with the company containing a union security clause. All employees were required to join the union. Because of her religious beliefs Mrs. Haynes could not do this. On September 27, 1974 she authorized her dues to be withheld by the company and paid to a charity. The Teamsters turned down this arrangement. On November 8, 1974 she was dismissed. During the time Mrs. Haynes was under extremely high pressure prior to her dismissal she suffered heart irregularities that she felt and her physician felt was directly related to her emotional stress over her impending termination. The same Teamsters Local had previously allowed Mr. Jon Lamon, an employee of the Southern Mich-

igan Cold Storage Company in South Bend to be exempt from the union security provisions of a contract they had just won. However, the Teamsters were unwilling to do it for Mrs. Haynes and insisted that she be dismissed.

###### BERNADINE BALD

After becoming convinced that she could no longer be a member of the Teamsters Local 959 in Anchorage, Alaska, Mrs. Bald, an employee of the RCA Alaska Communications, Inc., resigned from the union on September 1, 1974 and requested the option of paying her dues to a neutral charity. The union refused and Mrs. Bald was terminated in December of 1974. Her case is presently pending before the Supreme Court of the State of Alaska.

###### DORIS M'DANIEL

After starting work for the Essex Wire Company in Berrien Springs, Michigan, Mrs. McDaniel discovered that there was no accommodation for religious beliefs by the company or the International Association of Machinists when individuals held religious beliefs against joining or financially supporting a labor union. She was discharged on December 28, 1972. She instigated a charge of discrimination with the Equal Employment Opportunity Commission. Action was subsequently entered in the court of the Western District of Michigan in response to a motion to dismiss filed by the International Association of Machinists. Judge Fox dismissed the case on January 13, 1976. The case is presently on appeal before the Sixth Circuit Court of Appeals.

###### DUANE TERRELL BURNS

In 1970 Mr. Burns joined the Seventh-day Adventist Church. As he came to understand the teachings of the church and his relationship with other people and organizations, he determined that he could no longer remain a member of the United Transportation Union and resigned from the union on February 26, 1974. When the union declined to make an accommodation based on an alternate payment of dues to a charitable organization, Mr. Burns filed a complaint with the Equal Employment Opportunity Commission and filed suit in court on March 1, 1974. Mr. Burns has appealed his case from an unfavorable ruling of the district court of Arizona to the Ninth Circuit Court of Appeals where the case is now pending.

###### DAVID ANDERSON

In 1972 Mr. Anderson was fired by the General Dynamics Company in San Diego after he withdrew from the International Association of Machinists. He offered to pay the equivalent of dues to a neutral charity but his offer was declined. He was dismissed after having worked at the General Dynamics Plant following the successful efforts of the union to obtain a union security contract. Thus his dismissal came about by conditions beyond his control. Mr. Anderson lost the case in the Southern District of California and has appealed it to the Ninth Circuit Court of Appeals where the case is now pending.

###### CLARETA MICHAUD

Mrs. Michaud worked for the Oxford Paper Company which was sold in about April of 1976 to the Boise-Cascade Company. Thereafter she was confronted with a union security contract between the United Paper Workers of America and the company. She offered to pay the equivalent of dues to a charity but the union steadfastly refused. When it was evident that the matter would be the subject of litigation the union agreed to have a neutral escrow fund established to be certain that her dues were paid the same as other workers. Her case was lost in the Superior Court of Maine (Oxford County) and is presently on appeal to the Su-



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preme Judicial Court of the State of Maine. She is continuing to work pending the outcome of the litigation.

ROBERT A. WONDZELL

Mr. Wondzell had been a member of the Lumber Production and Industrial Workers Union Local 2362 for about nine years while he was employed by the Alaska Wood Products Company in Wrangell, Alaska. During this time he became a member of the Seventh-day Adventist Church. Several years later he came under conviction that he should withdraw from the union and requested that he be accommodated by being allowed to pay his dues to a neutral charity. The union refused and the company discharged him on May 7, 1975. After filing charges of discrimination before the state and federal civil rights agencies he was issued a Right-to-Sue letter and entered action in the superior court for the State of Alaska. On October 15, 1975 the Judge found against him. His case is now on appeal to the Supreme Court of the State of Alaska.

HOWARD COOPER, RITA KIMBELL, AND HOWARD HOPKINS

These three Seventh-day Adventist Church members worked at the General Dynamics plant in Fort Worth. For a number of years there was no compulsory union membership requirement because Texas is a Right-to-Work state. However, the International Association of Machinists entered into a union security agreement with General Dynamics and petitioned for the discharge of the employees when they refused to join or support the labor union. The case went to the U.S. District Court for the Northern District of Texas where the three Seventh-day Adventist members lost. The case was appealed to the Fifth Circuit Court of Appeals where on June 9, 1976 the Court reversed the lower court's decision and remanded the case to the district court to determine accommodation on the facts of the case. The International Association of Machinists and General Dynamics appealed the decision to the U.S. Supreme Court. Without hearing the case the Supreme Court remanded the case during the summer of 1977 to the district court for determination of accommodation in harmony with its Title VII decisions. The case is now back in the district court for a hearing on the merits.

Religious liberty has always been, and should continue to be, a matter of the highest priority. Many Federal laws have provided special treatment because of personal religious belief. These include:

First. The Postal Reorganization Act of 1970;

Second. The Military Selective Service Act;

Third. The Immigration and Nationality Act;

Fourth. The Social Security Act;

Fifth. The Federal Aviation Act;

Sixth. The Civil Rights Act of 1964—title VII; 1968—housing; and 1972:

Seventh. The Jury Selection and Service Act;

Eighth. The Public Health Service Act Amendments of 1973; and

Ninth. The 1974 "health care" amendments to the National Labor Relations Act.

Some feel that the religious accommodation represented by this bill does not rise to the status of a first amendment issue. By recognizing that this bill accommodates the religious beliefs of those small sects I have mentioned, and thereby reconciling the National Labor Relations Act with the Equal Employment Oppor-

tunity Act, I believe that the first amended constitutional rights are fully protected, for that is what the EEOA sought to accomplish. Certainly this bill accepts the principle of religious liberty as guaranteed by our Constitution, and implemented by the Equal Employment Opportunity Act; and it is clear the bill prefers that principle over any conflict with it raised by our national labor policy.

Enactment of this legislation will demonstrate the Federal Government's abiding concern for the preservation of religious liberty to all those who strictly adhere to the teachings of their religion, regardless of how small their numbers.

I urge my colleagues to support this bill.

Mr. Speaker, I yield to the gentleman from Alabama (Mr. EDWARDS).

Mr. EDWARDS of Alabama. Mr. Speaker, I thank the gentleman for yielding.

I have a question. The committee report refers to section 8(a)(3), which permits, but does not require, the employer and the union to agree that all employees must pay fair and reasonable union dues as a condition of continued employment.

I suspect that is with respect to an agency shop, where it is agreed to by both the union and the employers.

Mr. ERLENBORN. Yes, that is correct.

Mr. EDWARDS of Alabama. Mr. Speaker, if the gentleman will yield further, the bill in question amends section 19. Does this put a conscientious objector in any different position than the employee who does not care to join a union and who works for a company where there is no agreement between the union and the employer under section 8(a)(3)?

Mr. ERLENBORN. If I understand the gentleman's question, the only case where the acts we are considering would be necessary is where there is an agency shop agreement and the employee who belongs to one of these religions is then faced with making a choice between his job or his religion.

The SPEAKER pro tempore. The time of the gentleman from Illinois has expired.

Mr. ERLENBORN. Mr. Speaker, I yield myself 1 additional minute.

Mr. Speaker, if there is no agency shop agreement, there would be no necessity for the application of this act, because the employee would not be required to pay dues or join the union.

Mr. EDWARDS of Alabama. Will the gentleman yield further?

Mr. ERLENBORN. I will be happy to, under section 8(a)(3), if the employer and employee had not bargained and agreed there would be an agency shop, then, a conscientious objector would not be required to pay anything to an organization under the present bill?

Mr. ERLENBORN. The gentleman, in my opinion, is correct. I think there are two situations: the union shop and the agency shop. The union shop, where the employee might be forced to join the union; the agency shop, where, although he is not forced to join the union, he is

forced to pay initiation fees and dues to the union.

In both of those situations, this act would apply for the conscientious objector who belongs to a religion which prohibits him as a matter of conscience from doing so. He would, if it is so agreed between the union and employer, be required to pay the equivalent amount to a charity not connected either with the union or with his religion.

The SPEAKER pro tempore. The time of the gentleman from Illinois has again expired.

Mr. ERLENBORN. Mr. Speaker, I yield myself 1 additional minute.

I would ask the gentleman from New Jersey if he does not agree with the interpretation as revealed by the colloquy between myself and the gentleman from Alabama.

If I might just restate the question very succinctly, the only time this law would be necessary is if there is either a union shop or an agency shop agreement in effect. If there is a union that has been certified and is acting as the bargaining agent, but there is neither an agency shop or a union shop agreement between that union and the employer, the problem does not arise and the employee is not faced with the necessity of either joining or paying dues.

Mr. THOMPSON. The gentleman is quite correct.

Mr. ERLENBORN. I thank the gentleman.

Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. DON H. CLAUSEN).

(Mr. DON H. CLAUSEN asked and was given permission to revise and extend his remarks.)

Mr. DON H. CLAUSEN. Mr. Speaker, it gives me great pleasure to see the House of Representatives ready to affirm today one of our basic constitutional principles—the first amendment guarantee of free exercise of religion.

The concepts behind the religious freedom amendment have come to fruition because of the cooperation, commitment and resolute efforts in the Labor Management Subcommittee of the gentleman from New Jersey (Mr. THOMPSON), the gentleman from Illinois (Mr. ERLENBORN), the gentlewoman from California (Mrs. PETTIS) and the gentleman from Oregon (Mr. DUNCAN) and Mr. ANCOIN, Mrs. LLOYD of Tennessee and Mr. STUMP of Arizona—all have made significant contributions to insuring that we will have true religious liberty in our Nation's labor law. We have been working for 13 years on an effort initiated by our respected former colleague from Oregon (Mrs. GREEN).

They have demonstrated that they are champions of religious freedom and it has been my privilege and pleasure to coordinate this legislative effort with my good friends and colleagues in the House and with the religious groups directly affected by this legislation. H.R. 3384 the "religious freedom amendment," would provide that any employee who is a member of a religion or sect historically holding conscientious objection to joining or financially supporting a labor organization, would not

be required to do so. In effect, it would protect the rights of conscience of thousands of sincere people who believe it to be a violation of Biblical principles to join or financially support a labor union.

In the past we have passed legislation to protect the free exercise of religion. For instance, consider our laws providing for religious dissenters to military service, for religious dissenters to the social security program and for health-care workers. The religious freedom amendment will simply follow this precedent by permitting certain, relatively small, religious groups to freely exercise their religious beliefs without losing their jobs if they work under labor-management contracts with union security clauses. These religious bodies include the Amish, some of the Mennonites, the Old German Baptists, and Plymouth Brethren No. 4, and the Seventh-Day Adventists.

In seeking the exemption from union shop agreements these people cannot be called "free-riders" for, in fact, they are in complete agreement with the provisions in this measure which provide that the full amount of union initiation and the full amount of union dues will be paid to a charity that is mutually acceptable to both the union and the people who, as a matter of conscience, cannot join the union.

Some may wonder why this legislation is necessary. Let me explain it this way.

Religious dissenters to membership in or financial support of labor organizations have had difficulties ever since the National Labor Relations Act required them to either join or financially support a labor organization. During the 1940's and 1950's individuals and at least one of the churches tried to make voluntary arrangements with labor organizations, but often the arrangements did not work satisfactorily.

Through the last few years several religious dissenters on this issue have sought protection through section 701 (j) of title VII of the Civil Rights Act of 1965. Their efforts in the courts to determine whether such accommodations are reasonable and do not cause undue hardship to the employer or the labor organization have met with mixed results. The Court of Appeals in the Fifth Circuit has ruled that a labor organization and an employer must try to accommodate. That case involved three employees with 20 or more years' work experience. However, in California, my home State, a Federal district court has upheld the firing of a worker with 22 years of experience who refused to either join or financially support a labor organization.

In Wisconsin, another worker was fired after nearly 30 years at the job, again over the conflict between his religious beliefs and a union-security clause. His case is now before a Federal district court. Thus some courts are extending title VII protection to these religious dissenters and others are not. It is up to us here in the Congress to show our intent that these people should be allowed to exercise their religious beliefs.

In 1974, when we amended the National Labor Relations Act to allow unionization of private health care institutions, we added a section 19 to the act which gave "conscience clause" coverage to these specific workers. The bill before us, H.R. 3384, the religious freedom amendment, amends section 19 so that it will cover all workers covered by the National Labor Relations Act.

This measure has received strong support from both sides of the aisle and from labor and management alike. In fact, George Meany, president of the AFL-CIO, while testifying before the Subcommittee on Labor-Management Relations on another House bill said the following about our amendment concept:

"Our position on that, I think, has been clear for years, and I think it is a fair position on the people who have conscientious objections to joining unions. We think they should participate, that they are the beneficiaries of good contracts where we get good contracts. At the same time we want to recognize their obligations to their particular religion. So we say, in effect, that they should make a contribution, not to us, but some charitable (organization). . . ."

Our hearts and our minds tell us this is a bill that merits our approval. In the true spirit of the first amendment free exercise of religion clause of our Constitution, I urge my colleagues to join me in supporting H.R. 3384.

In my judgment, the greatest contribution to the social progress of mankind anywhere on Earth, has come as a result of the established guidelines in our Constitution. Of all the Constitutional amendments, I personally believe that first amendment has been the most constructive and protective of our basic and cherished freedoms. This measure is, in fact, simply a restoration to our Federal labor laws of the full constitutional guarantee of freedom of religion to practice the religion.

The legislative effects of this measure go beyond permitting the free exercise of an individual's religious conscience in his employment. It is a reaffirmation by the Congress that we will take whatever steps are required to insure in every way the right of each American to worship his God in his own way. And, further, that no action by Government—directly or indirectly—will be allowed which would limit this right.

We do not need to share this viewpoint, indeed we do not even need to understand it to stand emphatically in support of these individuals' conscientious convictions.

Religious liberty does not mean, after all, simply to respect a man's religion. It means to protect his right to practice a religion we may not respect. Let us be remembered as statesmen who recognized this fact and who acted resolutely and intelligently in their defense of and for the cause of religious freedom in America.

Mr. THOMPSON. Mr. Speaker, will the gentleman yield?

Mr. DON H. CLAUSEN. I yield to the gentleman from New Jersey.

Mr. THOMPSON. I think also that the late and distinguished former Senator from Oregon, Wayne Morse, should

be recognized at this time for his efforts over a long period of time to achieve the result which we hope is achieved today. Senator Morse was very deeply and vitally interested, and communicated with me on innumerable occasions on behalf of this legislation.

Mr. DON H. CLAUSEN. I am glad the gentleman made that observation.

Mr. DUNCAN of Oregon. Mr. Speaker, will the gentleman yield?

Mr. DON H. CLAUSEN. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. I feel remiss, and I want to thank the gentleman from New Jersey, for mentioning the fact of Senator Morse's participation. There was no one who spoke out more clearly or more loudly or at such length on behalf of the rights, not only of organized labor, but of the rights of people in religious minorities.

Mr. DON H. CLAUSEN. Mr. Speaker.

I appreciate the comments of the gentleman from Oregon.

Mr. THOMPSON. Mr. Speaker, I have no further requests for time.

Mr. ERLÉNBERG. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mrs. Parris).

(Mrs. Parris asked and was given permission to revise and extend her remarks.)

Mrs. PETTIS. Mr. Speaker, I rise today in wholehearted support of H.R. 3384, the religious freedom amendment to the National Labor Relations Act. I should add that I am a cosponsor of an identical bill—H.R. 9368.

My sincere appreciation goes out to our distinguished colleague, the gentleman from New Jersey (Mr. Thompson), the chairman of the Subcommittee on Labor-Management Relations, who has been instrumental in getting this bill reported to the floor.

I also would like to credit our colleagues: Mr. DOV CLAUSEN and Mr. JOHN ERLÉNBERG for their continued and enthusiastic support of this legislation.

Mr. Speaker, unlike many of us here today, I am not an attorney and neither am I an expert on constitutional law.

However, like every citizen of these United States, I hold dear the cherished words of the first amendment to the Constitution which guarantee us all the right to follow our respective religious faiths.

But I fear that many of my colleagues may not be aware that thousands of Americans whose religious beliefs prohibit them from joining labor organizations have had to choose between retaining their jobs or violating their religious consciences.

Sadly, many of sincere religious conviction have wound up on unemployment rolls because of their strong religious beliefs.

I am aware of at least 32 men and women in my congressional district who, during the past several years, have either lost or have been refused employment because of religious beliefs which prohibit them from financially supporting a labor organization.

As many of you may know, I am a Seventh-Day Adventist and the tenets of



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my church strictly prohibit union membership.

This problem is not only encountered by Seventh-Day Adventists, however, but it affects other religious bodies as well.

I should stress that it is not our desire to create a special class of religious "free riders" who will take advantage of benefits negotiated by labor or professional organizations without contributing to the support of these groups.

H.R. 3384 remedies this problem by requiring that employees whose sincere religious beliefs prohibit the monetary support of labor organizations be permitted to contribute to nonreligious charitable funds in place of periodic labor organization dues or initiation fees.

I would remind my colleagues that during testimony before the Subcommittee on Labor-Management Relations in September, George Meany, the President of the AFL-CIO, endorsed this concept and that the 1965 AFL-CIO policy statement supports the "conscience clause" which is part and parcel of H.R. 3384.

However, I am sorry to report that not all member unions of the AFL-CIO have instituted a clear, consistent policy to accommodate those who may not join a labor union due to religious dissent.

H.R. 3384 would simply bring all labor organizations in line with AFL-CIO policy on this question. It is not an anti-labor measure by any means. It is, rather, an attempt to preserve the religious liberties which were guaranteed by our forefathers.

In debating this issue, it occurs to me that while the first amendment is intended to grant up the right of freedom of religion, economic conditions today are such that one can ill afford to give up his job to satisfy his religious conscience.

Yet, many have been forced to do just this and, therefore, the essence of the first amendment has been violated.

I ask my colleagues to vote in favor of H.R. 3384 and bring the protection of the first amendment to all our citizens who are covered by the National Labor Relations Act.

A nation such as ours that speaks out to the world on the question of human rights can ill afford to bring hardship and misery upon some of its working men and women because of their sincerely held religious beliefs.

Mr. THOMPSON. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I would like to commend the Public Affairs and Religious Liberties Department of the Conference of Seventh-day Adventists and, particularly, Mr. Melvin Adams, who testified before us. Unfortunately, I cannot name all the others who have taken such a great and consistent interest in this legislation.

Mr. DRINAN. Mr. Speaker, as we consider the religious freedom amendment to the National Labor Relations Act, we must reflect upon the fact that religious freedom lies at the heart of our system of Government.

The issue before us today is a simple one and yet extremely significant: Will we allow employees to exempt themselves

from union membership for religious reasons? Mr. Speaker, our entire tradition of tolerance and pluralism argues strongly for a yes vote on the religious freedom amendment offered by Mr. THOMPSON.

The expansion and protection of religious freedom is so central to our democracy that I regard today's issue as clear-cut. By voting yes we are recognizing the deeply felt religious convictions of many of our citizens which prevent them from affiliating with labor organizations. To refuse to acknowledge and make allowances for these legitimate convictions is to say that our system of Government cannot brook dissent or diversity. That is hardly the message this House would want to send to the American people.

Mr. Speaker, I urge my colleagues to recognize the strong religious views held by some of our finest citizens which include conscientious objection to union membership. I urge a yes vote on H.R. 3384.

Finally, I believe the House will pass this legislation today and thereby signal not the end, but only an important step toward a further expansion of religious freedom. I am hopeful that during the next session of Congress we will pass H.R. 8429, which I have introduced and which provides full protection of the law for those individuals whose religious beliefs preclude their working on Saturday. Under present law, employers may force their workers to labor on Saturday, despite any religious objection, under threat of dismissal. To state it bluntly, present law discriminates against Seventh Day Adventists, Orthodox Jews, and other groups who observe a Saturday Sabbath. Present law must be changed.

Mrs. LLOYD of Tennessee. Mr. Speaker, I would like to urge my fellow colleagues to support H.R. 3384, the religious freedom amendments, which we are considering under suspension of the rules today. This bill provides that any employee who belongs to a religion or group historically holding conscientious objections to joining or financially supporting a labor organization shall not be required to do so but instead will be required to pay a sum equal to and in place of periodic union dues and initiation fees to a nonreligious charitable fund.

Our Nation has remained the strong power that it is because the individual's rights and freedoms have been safeguarded and this most assuredly includes the right to freedom of religion under the first amendment. The freedom of religion is an important part of our American heritage and it is essential that we insure through legislation such as H.R. 3384 the protection of human rights and individual dignity.

There are those whose religious convictions will not allow them in good conscience to join labor unions or financially support them even if it results in the loss of a job or dislocation to a State where they would not be placed in such a situation. This amendment will simply give these people the freedom to continue to work under circumstances which will allow them to pursue their religious beliefs in good faith.

I am confident that my colleagues will

recognize the importance of this legislation, and the vital need for the protections of constitutional rights which have served as a foundation for the progress of our great country. Let us not deny any American those inherent rights which all of us are so proud to enjoy as citizens of a country which was built on the belief that an individual's rights and freedoms must be our primary concern.

Mr. ERLÉNBOEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. ASHBROOK). (Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, I rise in support of H.R. 3384. In 1974, the Congress adopted an amendment to the health care institution bill, Public Law 93-360, which provided that if any employee of a health care institution belonged to a religion or sect which historically held conscientious objection to joining or financially supporting a labor organization, the employee would not be required to do so. Instead, where there was negotiated a union security clause requiring membership or financial support, the employee of a health care institution could contribute the equivalent of dues and fees to a nonreligious charity set out in the collective-bargaining agreement, or if none were set out, could contribute to a nonreligious charity of his choice.

This bill expands those protections of religious freedom to all employees, not just employees of health care institutions, but all employees. It is a bill supported by both Republicans and Democrats. It is a bill that comports with the policy of the AFL-CIO set out in 1965. At that time the AFL-CIO executive council officially declared that unions should accommodate themselves to genuine individual scruples.

It has been argued that such a bill is unnecessary since the courts and the National Labor Relations Board have held that membership in a labor organization cannot be compelled under the union security provisions of the act. *Union Starch and Refining Co. v. NLRB*, (186 F. 2d 1008 (1951)). However, some religions or sects oppose financial support as well as membership. Accordingly, this bill makes clear that employees will not have to either join a labor organization or financially support unions if the religion or sect to which they belong prohibit such.

The bill, additionally, solves the problem of the alleged "free rider"—those who receive the benefit of union assistance, but do not contribute to its support. Instead of requiring equivalent support for the union, the bill requires the equivalent of dues and fees be contributed to a nonreligious charity. Therefore, the objecting employee does not get off without some contribution, but allows the employee to pay his fair share in a manner compatible with his conscience. All the employee must do is offer proof of his contribution in a manner set out in rules and regulations by the board.

H.R. 3384, therefore, resolves a long-

standing conflict for employees who are members of various religious or sects which historically hold conscientious objections to joining or financially supporting unions. The conflict of making such employees choose between their religion or their jobs was incompatible with our constitutional rights and rights under the Equal Employment Opportunity Act.

It should be made clear that the religious do not object to unions as such, but they do object to sources of potential conflict, and to membership in organizations other than their church. This bill, which requires contributions to non-religious charities, does not conflict with the beliefs of these small religious groups. The heritage of this country is based on majority rule with protection of minority rights. This bill recognizes and enhances this heritage.

But, it should also be made clear that the bill does not resolve all our conflicts regarding religious liberty and our national labor laws. However, it should be fairly clear that Congress endorses an accommodation to religious conscience to a degree not yet found in our court and board decisions. Hopefully, we can reach a greater accommodation to our Sabbatarians by the development of the law in the area of reasonable accommodation to an individual's religious beliefs. If not, then the Congress would have to act again.

The chairman of our subcommittee (Mr. Thompson) is to be applauded for bringing this bill to the floor. Not long ago, he committed himself to do so, and, consistent with that commitment, we see H.R. 3384 on the floor today. Along with Mr. Thompson are others who have worked hard to see this bill enacted, including Mr. ERLBORN, Mrs. PETTIS, Mr. DON CLAUSEN, Mr. ROBERT DUNCAN, and former Members of Congress, Mr. Floyd Hicks and Mrs. Edith Green, who originally proposed such an amendment to the NLRA. I join them in their efforts and fully support the bill before us today. I urge my colleagues to support it as well.

#### GENERAL LEAVE

Mr. THOMPSON. Mr. Speaker, I ask unanimous consent that all Members may have 3 legislative days in which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. (Mr. BROWN of California). Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. Thompson) that the House suspend the rules and pass the bill H.R. 3384.

The question was taken.

Mr. ERLBORN. Mr. Speaker, on that I demand that yeas and nays.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### SILETZ INDIAN TRIBE RESTORATION ACT

Mr. RONCALJO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7259) to restore the Confederated Tribes of Siletz Indians of Oregon as a federally recognized sovereign Indian tribe, to restore to the Confederated Tribes of Siletz Indians of Oregon and its members those Federal services and benefits furnished to federally recognized American Indian tribes and their members, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7259

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Siletz Indian Tribe Restoration Act".*

SEC. 2. For the purposes of this Act—

(1) the term "tribe" means the Confederated Tribes of Siletz Indians of Oregon;

(2) the term "Secretary" means the Secretary of the Interior or his authorized representative;

(3) the term "Interim Council" means the council elected pursuant to section 5;

(4) the term "member", when used with respect to the tribe, means a person enrolled on the membership roll of the tribe, as provided in section 4 of this Act; and

(5) the term "final membership roll" means the final membership roll of the tribe published on July 20, 1956, on pages 5454-5462 of volume 21 of the Federal Register.

SEC. 3. (a) Federal recognition is hereby extended to the tribe, and the provisions of the Act of June 18, 1934 (48 Stat. 684), as amended, except as inconsistent with specific provisions of this Act, are made applicable to the tribe and the members of the tribe. The tribe and the members of the tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes. Notwithstanding any provision to the contrary in any law establishing such services or benefits, eligibility of the tribe and its members for such Federal services and benefits shall become effective upon enactment of this Act without regard to the existence of a reservation for the tribe or the residence of members of the tribe on a reservation.

(b) Except as provided in subsection (c), all rights and privileges of the tribe and of members of the tribe under any Federal treaty, Executive order, agreement, or statute, or under any other authority, which were diminished or lost under the Act of August 13, 1954 (68 Stat. 724), are hereby restored, and such Act shall be inapplicable to the tribe and to members of the tribe after the date of enactment of this Act.

(c) This Act shall not grant or restore any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, to the tribe or any member of the tribe, nor shall it be construed as granting, establishing, or restoring a reservation for the tribe.

(d) Except as specifically provided in this Act, nothing in this Act shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

SEC. 4. (a) The final membership roll is declared open. The Secretary, the Interim Council, and tribal officials under the tribal constitution and bylaws shall take such measures as will insure the continuing accuracy of the membership roll.

(b) (1) Until after the initial election of tribal officers under the tribal constitution and bylaws, a person shall be a member of the tribe and his name shall be placed on the membership roll if he is living and if—

(A) his name is listed on the final membership roll;

(B) he was entitled on August 13, 1954, to be on the final membership roll but his name was not listed on that roll; or

(C) he is a descendant of a person specified in subparagraph (A) or (B) and possesses at least one-fourth degree of blood of members of the tribe or their Siletz Indian ancestors.

(2) After the initial election of tribal officials under the tribal constitution and bylaws, the provisions of the tribal constitution and bylaws shall govern membership in the tribe.

(c) (1) Before election of the Interim Council, verification of descentancy, age, and blood shall be made upon oath before the Secretary and his determination thereon shall be final.

(2) After election of the Interim Council and before the initial election of the tribal officials, verification of descentancy, age, and blood shall be made upon oath before the Interim Council, or its authorized representative. A member of the tribe, with respect to the inclusion of any name, and any person, with respect to the exclusion of his name, may appeal to the Secretary, who shall make a final determination of each such appeal within ninety days after an appeal has been filed with him. The determination of the Secretary with respect to an appeal under this paragraph shall be final.

(3) After the initial election of tribal officials, the provisions of the tribal constitution and bylaws shall govern the verification of any requirements for membership in the tribe, and the Secretary and the Interim Council shall deliver their records and enrollment matters, to the tribal governing body.

(d) For purposes of section 5 and 6, a member who is eighteen years of age or older is entitled and eligible to be given notice of, attend, participate in, and vote at, general council meetings and to nominate candidates for, to run for any office in, and to vote in, elections of members to the Interim Council and to other tribal councils.

SEC. 5. (a) Within forty-five days after the date of the enactment of this Act, the Secretary shall announce the date of a general council meeting of the tribe to nominate candidates for election to the Interim Council. Such general council meeting shall be held within sixty days after the date of the enactment of this Act. Within forty-five days after such general council meeting the Secretary shall hold an election by secret ballot, absentee balloting to be permitted, to elect nine members of the tribe to the Interim Council from among the nominees submitted to him from such general council meeting. The Secretary shall assure that notice of the time, place, and purpose of such meeting and election shall be provided to members described in section 4(d) at least fifteen days before such general meeting and election. The ballot shall provide for write-in votes. The Secretary shall approve the Interim Council elected pursuant to this section if he is satisfied that the requirements of this section relating to the nominating and election process have been met. If he is not so satisfied, he shall hold another election under this section, with the general council meeting to nominate candidates for election to the Interim Council to be held within sixty days after such election.

(b) The Interim Council shall represent



deal with this very awesome problem of malnutrition and hunger.

Mr. Speaker, this is a worthy resolution. It does not mandate the President to form a Commission on Domestic and International Hunger and Malnutrition. It respectfully requests that the President do so.

I hope the Members will support this resolution overwhelmingly.

The Speaker, I yield whatever time I have remaining to the gentleman from Minnesota (Mr. Nolan), the sponsor of the resolution.

Mr. NOLAN. Mr. Speaker, the assertion of the gentleman from New Jersey (Mrs. Fenwick) that this resolution was written by some group outside the Congress is erroneous. As the prime sponsor of this resolution, I want to assure the gentleman and the Members of the House that the resolution was written in consultation with farm groups, with religious groups, with business groups, with a wide variety of public interest groups, with the Office of the President and with the careful assistance of many Members of this House.

Mr. ALEXANDER. Mr. Speaker, the irony of people of our own Nation suffering from malnutrition or starvation when our producers are troubled by unsold quantities of basic foods, such as wheat and rice, is nothing less than a condemnation of our natural resource management and agricultural policies. While I am a sponsor of the proposal before us, I am troubled about what it does not say about the job of the Commission.

In today's world as a whole, we still have enough fertile land to grow the food people need to survive. The fact is that in too many years we are growing more food in the United States than our system allows us to get into the hands of our people.

The bottlenecks and obstacles between producing food and consuming it come in a Heinz 57 variety.

Our farm production financing system is becoming so inadequate that it discourages small and mid-sized farming operations and encourages concentration of food production in the hands of fewer and fewer people. Since 1970 it is estimated that the farm population of the United States has decreased by 1.5 million persons.

Despite the fact that we are spending billions every year on our transportation networks, increasingly small shares of this investment are going into the parts of the system that connect farms with terminal collecting points such as country grain elevators. The highways over which the food and the materials and equipment for producing it actually move to or from the farm are often in such poor condition that two, three, and four trips must be made to transport loads our trucks have the capability of moving in one trip on adequate pavements.

The world's best Interstate Highway System, rail freight system, and waterway barge system cannot do the job that must be done if the secondary, rural highways are allowed to continue to go to potholes. As it is our highway system

is deteriorating 50 percent faster than we repair, rehabilitate, or replace it.

Competition for essential production materials, such as nitrogen, and for processing materials, such as natural gas, is hampering our efforts to manage our food resources.

Conflicts between environmental protection needs and the need to store water supplies to fight droughts such as that which has plagued us during the past year and to control floods such as those which destroyed crops in 1972, hampered planting in 1973 and have caused heavy damage in Arkansas this fall are threatening our food production capacity.

Roller coaster behavior in farm gate prices for rice, soybeans, corn, wheat, beef, poultry, pork, and dairy products caused by uncoordinated Government policies, export embargoes, and moratoriums; labor organization decisions, and unwise speculation in private commodities markets are hampering producers efforts to bring stability to their farming operations.

A relatively new question mark in the future of the U.S. food production system is the increasing share of our farmland that is moving into the hands of foreign investors. In the years ahead, as the gap between food supplies and demand widens, what will be the marketing and production decisions of these landowners? How will these decisions affect our response to domestic and international food needs?

And, one final issue is the money to pay farmers for the food they raise. Many people in our own Nation, as well as those in other nations, simply do not, for one reason or another, have any enough money to buy the food they need. The question is "Are the programs, such as food stamps and Food for Peace, that we are using now to help erase hunger the right programs?" Can we as a people continue to afford them? In the long run, do these programs harm our announced objective of increasing production, improving food distribution systems, and moving hunger from the endangered species list of problems to the list of extinct problems?

These are by no means all the problems the Commission must address. There are those questions about:

Ways to help food deficit nations improve their ability to grow the food their own people need;

Ways to teach individual families how to be sure the food they are eating is nutritionally balanced;

Ways to bring closer into balance population numbers and food supply numbers; and,

Ways to protect farmland owners from irresistible pressures to allow their acreage to be converted to urban sprawl.

And, the list could go on and on.

What I hope is that the Commission will address itself not only to the needs of consumers but to the needs of producers of food as well. What we must have is a comprehensive and coordinated food production and distribution policy that is equitable to all parties. We do not have such a policy now. Without this kind of policy our chances of overcoming hun-

ger problems are reduced to the vanishing point.

#### GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 784.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. ZABLOCKI. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. ZABLOCKI) that the House suspend the rules and agree to the resolution (H. Res. 784), as amended.

The question was taken.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 3, rule XXVII, the Chair will now put the question on each motion on which further proceedings were postponed, in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R. 3384.

S. 1306.

House Resolution 315.

House Resolution 784.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

#### CONSCIENTIOUS OBJECTION TO JOINING A LABOR ORGANIZATION

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 3384.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. Thompson) that the House suspend the rules and pass the bill, H.R. 3384, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 409, nays 7, not voting 27, as follows:

(Roll No. 726)

YEAS—400

Abdnor	Anunzio	Baucus
Addabbo	Applegate	Bauman
Akaka	Archer	Beard, R.I.
Alexander	Armstrong	Beard, Tenn.
Allen	Ashbrook	Bedell
Ambro	Ashley	Bellison
Ammerman	Aspin	Benjamin
Anderson,	AuCoin	Bennett
Calif.	Badham	Bevil
Anderson, Ill.	Badillo	Biaggi
Andrews, N.C.	Bafalis	Bingham
Andrews	Baldus	Blanchard
N. Dak.	Barnard	Blouin

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. SMITH), that the House suspend the rules and pass the Senate bill S. 1306, as amended, on which the yeas and nays are ordered.

Cleveland